IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9790 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUMIKABEN KIRANBHAI PATEL

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

1. Special Civil Application No. 9790 of 2002

MR KB PUJARA for Petitioner No. 1

Mr.Sompura, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/10/2002

ORAL JUDGEMENT

Rule. Mr.Sompura, Ld.AGP waives service of rule.

With the consent of parties matter is taken up for final

hearing.

2. The short facts of the case are that the petitioner passed the Xth Standard examination in the year 1999 with 88.29% marks. The petitioner, thereafter, appeared in HSC (Science stream) examination held in April/May, 2001 and failed. Thereafter, the petitioner appeared HSC (General stream) examination held in April/May 2002 and passed with 78.33% marks. The petitioner applied for admission to PTC course. However, the respondents deducted 5 marks while deciding the merit of the petitioner on the basis of his failure in HSC (Science stream) examination held in April/May, 2001 and the petitioner was not granted admission and hence this petition.

3. I have heard Mr.B.N.Patel for Mr.Pujara on behalf of the petitioner as well as the Ld.AGP Mr.Sompura on behalf of respondent Nos 1 & 2. Mr.Patel has relied on the judgment of this court, dated 28.8.02 passed in Special C.A.No.7189/02 on the identical point. There is no dispute that the case of the petitioner is more or less similarly situated except that the petitioner of the said petition had failed at three attempts in the said examinations whereas the present petitioner had failed at one attempt but the common aspect is that all these attempts were in HSC (Science stream) and they were not in HSC(General stream).

4. This Court in the above referred matter in the case of "Patel Pragneshkumar Pravinchandra v. Director of Primary Education" in SCA No.7189/2002 has observed as under:

" Therefore, it cannot be said that the court while considering the applicability of the Rule cannot examine as to whether such application of the rule has any rationale or the purpose to be achieved. If the provision made for deduction of 5 marks on each attempt failed is read in absolute terms, then possibly, the authority would be justified in deducting the marks of the petitioner for failure at 12th standard HSC science steam. However, in the present case there is no dispute that the petitioner has secured 79.70 percent marks at HSC examination general stream and there is also no dispute on the point that the petitioner has applied for admission in PTC course in general stream and there is also no dispute on the point that the merit order is prepared by the authority

on the basis of inter se merit amongst the students who passed HSC general stream. In the above view of the matter it can be said that the performance or passing or failure of the petitioner at 12th standard HSC science stream, has no connection or the same is of no relevance for the purpose of testing the eligibility criteria of the student who has passed 12th standard HSC examination in general stream and who is to be considered amongst inter se merit of the students of 12th standard HSC examination in general stream. If the petitioner had failed at any attempt in 12th standard HSC general stream examination, possibly the matter would have been different. But such is not the case in the present petition. In view of this I cannot accept the contention of the respondent authority that irrespective of the stream if the petitioner has failed in any attempt even in science stream, the authorities are justified in deducting 5 marks on each attempt failed even for considering the eligibility criteria in 12th standard general stream for the purpose of granting admission in PTC course. In my view aforesaid ground appears to be extraneous and there is no rationale to be achieved for the purpose of policy to be achieved. In view of the above, the contention of Mr.Pujara deserves to be accepted that the performance of the petitioner at the 12th standard HSC stream is wholly irrelevant even if rules or provisions made for deduction of marks is to be maintained."

The Court further observed as under:

" Even otherwise also on the overall reading of the aforesaid rule read with the scheme of granting admission in PTC course it appears that the provisions of deduction of 5 marks at each attempt failed is to be applied in that respective category and not in other categories and that Rule itself has no applicability qua granting admission in PTC general category. I am also of the view that the decision or rather the stand of the authority over the said rule appears to be arbitrary and without proper application of mind."

5. In view of the above observations, petition deserves to be allowed with a clarification that the admissions which have already been granted to the students are not to be disturbed. However, Mr.Patel for the petitioner states that the seats in PTC course are still vacant and the admission process is going on. Therefore, the respondents are directed to consider the case of the petitioner for grant of admission on the basis of marks obtained in XIIth Std (General stream) without any deduction of marks but without disturbing the admissions already granted. Respondents shall consider the case of the petitioner on the basis of interse merit for finalising the admission process without disturbing the admissions already granted. Rule is made absolute accordingly. There shall be no order as to costs. DS permitted.

4.10.02 (JAYANT PATEL,J)